

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

**CHARLES EDWARD LINCOLN, III,  
and JOHN HENRY FRANKS,  
Plaintiffs**

**VS.**

**GREG ABBOTT, Texas Attorney General  
THE HONORABLE JAMES F. CLAWSON,  
MICHAEL P. DAVIS,  
JANA DUTY, Williamson County Attorney,  
JAMES RANDALL GRIMES,  
THE HONORABLE MICHAEL JERGINS  
LAURIE J. NOWLIN,  
THE HONORABLE B.B. SCHRAUB,  
JAMES CARLTON TODD,  
WILLIAMSON COUNTY, TEXAS  
TEXAS STATE JUDGES MICHAEL JOE 1-N,  
TEXAS ATTORNEYS JAMES JOE 1-N,  
Defendants**

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**CIVIL ACTION NUMBER:  
A-06-CA-838-LY**

**DEFENDANTS, J. RANDALL GRIMES AND MICHAEL P. DAVIS',  
MOTION FOR SANCTIONS WITH BRIEF**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Defendants, J. Randall Grimes and Michael P. Davis, in the above styled and numbered cause, and file this Motion for Sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure, and in support thereof would show unto the Court as follows:

**PROCEDURAL HISTORY**

1. This is the third federal suit in a blitz of litigation filed by Plaintiff, Charles Lincoln. Lincoln, through Franks, has filed a fourth or fifth lawsuit, depending upon how they are counted, in Cause No. A-07-CA-0001-LY, styled *Franks, Et Al v. Williamson County*. This suit and the suits filed in Cause Nos. A-03-CA-407-LY and A-03-CA-610-LY directly involve Mr. Lincoln, a fourth

suit filed by Lincoln in the name of Rhonda Moe against the same Defendants in Cause No. A-03-CA-906-LY was dismissed on Plaintiff's own motion after Defendant had responded and filed a Motion to Dismiss showing Ms. Moe did not authorize the filing of that suit. There has also been State Court civil rights litigation on the same issues.

2. Generally, in his lawsuit, Lincoln alleges constitutional violations arising from a custody battle between Plaintiff and Elena Lincoln. This suit makes substantially the same allegations to the prior suite filed in Cause Nos. A-03-CA-407-LY and A-03-CA-610-LY with the exception that Plaintiff has added a request for class action asking the Court to declare Judge Jergins' rulings unconstitutional and added Michael P. Davis, Jana Duty, the Honorable James Clawson and others as Defendants.

3. A complete history of the long and winding road Lincoln has taken Defendants down is attached as Exhibit "A" and incorporated herein by reference.

4. Defendants Grimes and Davis seek monetary and non-monetary sanctions against Plaintiffs. Defendants have previously filed Motions for Sanctions in State Court proceedings which were granted. See Exhibit "1" attached hereto and incorporated herein by reference. On December 1, 2006, Lincoln, through Peyton Yates Freiman (who has acted as his process server in the new federal cases), has filed Plaintiff's Original Petition for Equitable Bill of Review of Sanctions Order and for Legal Malpractice in a case styled *Peyton Yates Freiman, Trustee v. Honorable Michael Jergins, Et Al*, Cause No. 06-989-C395, a copy of the petition is attached hereto and incorporated herein by reference as Exhibit "B". Mr. Lincoln's alleged lawyer in that case has denied she signed the pleadings. Apparently, someone forged her name. See Exhibit "C", Transcript of Hearing on December 13, 2006, in Cause No. 05-973-C395, *Lincoln v. Williamson County, Texas*, at pages 28

and 29, attached hereto and incorporated herein by reference. A copy of Lincoln and Franks' pleadings from the State court proceedings are attached hereto and incorporated herein by reference as Exhibit "D". Lincoln has not paid these sanctions and has ignored the prohibition against filing new lawsuits. Because Defendants had to go to extreme measures to dismiss the State lawsuit, they believe that not only should monetary sanctions be imposed against Lincoln, but the Court should consider prohibiting Lincoln from filing future lawsuits in this Court.

5. Lincoln has filed the numerous lawsuits merely to harass and vexate Defendants. Mr. Lincoln is a disgruntled parent who has lost in state courts and seeks to relitigate the same issues in federal court. Each and every time Plaintiffs' claims have been dismissed, yet Plaintiff continues to harass Defendants by filing more motions and more lawsuits.

### **ARGUMENTS AND AUTHORITIES**

6. Rule 11 of the Federal Rules of Civil Procedure prohibits the filing of a complaint not warranted by existing law or by non-frivolous argument for extension, modification or virtual existing law. The case before the Court today is exactly in line with *Hale v. Harney*, 786 F.2d 688, 692 (5<sup>th</sup> Circuit 1986). In this case, there is no rational argument which would have led any competent attorney or human being to believe that this suit should have been filed. Mr. Lincoln is a disbarred attorney having previously been convicted in federal court as a felon. He claims to be highly educated and former briefing attorney for a federal judge. Surely he can read the black letter law and see that there is no basis for filing this lawsuit.

7. Defendants cite *Jordaan v. Hall*, 275 F.Supp.2d 778, 787 (N.D. Tex. 2003) for similar example of such frivolous filing.

8. Additionally, Defendants would show that these pleadings, in particular the prior

Lincoln pleadings, were filed in violation of Rule 11(b), Prohibition Against Filing Multiple Suits for Improper Purposes. The attached Sanctions Order (Exhibit “1”) clearly shows the sole purpose Mr. Lincoln has is to harass and orchestrate lawsuits.

9. Once a violation of Rule 11 is shown, sanctions are mandatory. The minimum sanction is attorney’s fees. *Childs v. State Farm Mutual Ins. Co.*, 29 F.3d 1018, 1027 (5<sup>th</sup> Cir. 1994). Reasonable and necessary attorney’s fees would include defending not only this lawsuit but also the first two lawsuits. It is clear that nothing less will get Lincoln’s attention. Mr. Lincoln has a long history of making legal claims unwarranted by existing law. This pattern needs to be stopped. This Court has the power to at least stop this pattern in this matter in this Court.

10. This Motion for Sanctions was sent to Charles Lincoln, III and John Henry Franks more than 21 days prior to filing the Motion. See Exhibit “E”.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that the Court grant this Motion for Sanctions and order the submission of attorney’s fees in accordance with Rule 11 and for such other monetary and non-monetary sanctions that the Court may deem appropriate, and for such other and further relief to which the Defendant may show himself justly entitled.

Respectfully Submitted,

LAW OFFICES OF MIKE DAVIS  
1717 N. IH 35, Suite 300  
Round Rock, Texas 78664  
Phone: 512- 244-7771  
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By: /s/ Michael P. Davis  
Michael P. Davis  
State Bar No. 05528800  
ATTORNEYS FOR DEFENDANT  
GRIMES AND DAVIS

**CERTIFICATE OF SERVICE**

By my signature below, I hereby certify that a true and correct copy of the above Defendants,  
J. Randall Grimes and Michael P. Davis', Motion with Brief for Sanctions has been mailed, certified  
mail, return receipt requested to the parties shown below on February 9, 2007:

Charles Edward Lincoln, III  
6102 Valleyview Drive  
Lago Vista, Texas 78645

John Henry Franks  
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Kathy Wilson  
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Assistant Attorney Generals  
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Austin, Texas 78711-2548

By: */s/ Michael P. Davis*  
Michael P. Davis